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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964.

No. 116.

THOMAS J. CRIDER,
Petitioner,

vs.

ZURICH INSURANCE COMPANY,
Respondent.

RESPONDENT'S BRIEF ON THE MERITS.

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RESPONDENT'S BRIEF ON THE MERITS.

QUESTIONS PRESENTED.

Circumstances of the Case.

The primary issue is whether Crider, the Petitioner, can collect workman's compensation benefits under the board administered Georgia Workmen's Compensation Law in an Alabama court proceeding.

This issue arises out of a suit in the District Court on a void judgment rendered by an Alabama trial court.

Respondent moved to dismiss the case on the ground that the judgment was void in that the Alabama court did not have jurisdiction of the subject matter of the suit. The issue here was raised by the District Court below granting the Respondent's motion to dismiss (**Crider v. Zurich Insurance Company**, 224 F. Supp. 87 (N. D. Ala. 1963) (R. 23-25)), and the affirmance of the decision of the District Court by the Court of Appeals of the Fifth Circuit (**Crider v. Zurich Insurance Company**, 324 F. 2d 499 (5th Cir. 1963) (R. 28)).

THE QUESTIONS.

1. Was the Alabama Supreme Court free to grant full faith and credit and adopt the construction of the Georgia Workmen's Compensation Act given said Act by the Courts of Georgia?

2. Is an Alabama trial court free to adopt its own rules of conflict of laws when such choice had previously been made by the Alabama Supreme Court?

3. Can Alabama enforce in its courts the administrative remedy prescribed by Georgia for enforcement of its Workmen's Compensation Act?

4. May a privy collaterally attack a judgment which is void for want of jurisdiction over the subject matter?

5. Does the Full Faith and Credit Clause prohibit a Court of the United States from permitting a state court judgment to be attacked collaterally for want of jurisdiction over the subject matter?

STATEMENT OF THE CASE.

The Petitioner, plaintiff below, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Crider and Lawler were under and subject to the Workmen's Compensation Law of Georgia at the time Crider was injured. Both were under and subject to the Workmen's Compensation Law of Alabama. On the 3rd day of July, 1957, Crider instituted suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Workmen's Compensation Law and counts two and three being under the common law (R. 15-18). Respondent, Zurich Insurance Company, was not a party to this suit.

On February 10, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial and added Count A claiming under the Georgia Workmen's Compensation Law (R. 11-12). A default judgment was entered in the case on the 11th day of February, 1959, awarding compensation to Crider under the Workmen's Compensation Law of the State of Georgia (R. 13-14).

The respondent, Zurich Insurance Company, defendant below, was the workmen's compensation insurer of Lawler and as such was in privity with Lawler. On February 15, 1960, Crider filed a suit on the judgment against respondent in the Circuit Court of Jefferson County, Alabama (Appendix A), to which complaint respondent filed special pleas setting up the Georgia Workmen's Compensation statute and attacking the DeKalb County Circuit Court judgment as being void for lack of jurisdiction of the subject matter. Petitioner's demurrer to the pleas were overruled and on March 13, 1963, Petitioner dismissed this suit after the Alabama Circuit Court's adverse ruling on his demurrer to the respondent's pleas (Appendix A).

On March 14, 1963, Crider filed a Civil Action in the United States District Court for the Northern District of Alabama which was a suit on the judgment rendered by the DeKalb County Circuit Court on February 11, 1959 (R. 3-5). To the Petitioner's complaint respondent filed a motion to dismiss (R. 6-10). The District Court on May 16, 1963, granted respondent's motion to dismiss (R. 23-25). The Court of Appeals of the Fifth Circuit affirmed the judgment of the District Court on November 21, 1963 (R. 28).

Respondent would correct one misstatement on page 3 of Petitioner's Brief. Petitioner states that "The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent, but was later permitted to withdraw from the case (R. 13-14; Resp. Ex. B)." W. M. Beck did not appear for Respondent as Respondent was not then a party. W. M. Beck appeared only for the sole defendant, Lawler Construction Company, and withdrew his appearance before the default judgment was taken.

SUMMARY OF ARGUMENT.

Summarized, Respondent's argument is:

1. Prior to the judgment of the DeKalb County Circuit Court the Supreme Court of Alabama had made its choice of rules of conflict of laws and had adopted the construction given the Georgia Workmen's Compensation Act by the courts of Georgia.

2. The DeKalb County Circuit Court was not free to make its own choice of rules of conflict of law but was bound to follow the holding of the Alabama Supreme Court.

3. The Full Faith and Credit Clause does not require a forum state in an action in the forum state under the Workmen's Compensation Act of another state to enforce the foreign Act when such Act provides for its enforcement by an administrative board. The right and remedy of the foreign state are so united that they cannot be separated by the forum state.

4. The Alabama trial court judgment was erroneous as the trial court failed to follow the holding of the Alabama Supreme Court. The Alabama trial court judgment was void as the court had no jurisdiction over the subject matter of the Georgia Workmen's Compensation Act for the cause of action given by that Act could only be enforced by the Georgia Board of Workmen's Compensation.

5. The Respondent as the Workmen's Compensation insurer of the defendant against whom the void judgment was rendered was privy to the defendant employer and had standing in a suit on the judgment to attack collaterally the judgment as being void for want of jurisdiction of the subject matter. A Court of the United States will permit a collateral attack on the jurisdiction of a state court when the state court judgment is sued on in the United States Court.

ARGUMENT.

I.

The Selection by a Forum State of Rules of Conflict of Law Which Extend Full Faith and Credit to the Statute of a Sister State Should Be Sustained.

Petitioner has charted his course to persuade this Court that this case is another in a line of cases in which this Court has been asked to review the action of a state court in a Workmen's Compensation Action where there is claimed error in the forum state's consideration of an exclusive remedy provision in the compensation act of a sister state. Petitioner employs twisted logic, incomplete quotations from decisions of this Court, misconstruction of the holdings of several courts, and blindness as to certain authoritative decisions in a devious attempt to bring this case within the holdings of **Alaska Packers Asso. v. Industrial Acci. Com.**, 294 U. S. 532, 79 L. ed. 1044, 55 S. Ct. 518; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629; and **Carroll v. Lanza**, 349 U. S. 408, 99 L. ed. 1183, 75 S. Ct. 804.

The issues in the case at bar are not the same as those involved in the aforementioned cases as will be demonstrated subsequently in this brief. This is not a case where an Alabama Court had before it the provision of the Georgia Workmen's Compensation Act making that Act the exclusive remedy of a Georgia workman. This provision was not raised by the pleadings, was not considered by any of the courts involved in this case, and played no part in the holdings of the District Court and Court of Appeals of the Fifth Circuit which Petitioner claims were an erroneous application of the Full Faith and Credit Clause.

An Alabama trial court rendered a decision enforcing the Georgia Act. In a suit in District Court on the judgment, Respondent contended that the trial court judgment was void for lack of jurisdiction of the subject matter based on the Alabama Supreme Court decision of **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, which was not followed by the trial court.

Petitioner contends the Alabama trial court was free to make its choice of law. Respondent contends it was not free to do so—that it was bound to follow the Alabama Supreme Court. Petitioner in his brief argues that the Alabama trial court decision was the proper expression of Alabama choice of law. Respondent maintains that the trial court was not free to make its choice of conflict of law rules, and that the expression of Alabama choice of conflict of law rules was that made by the Alabama Supreme Court in **Singleton v. Hope Engineering Co.**, supra.

The question to be decided by this Court then becomes this: Does the Alabama Supreme Court have the right to extend full faith and credit to the Georgia Workmen's Compensation Act thereby refusing to enforce in Alabama courts the administrative remedy provided by said Act.

Petitioner on page 12 of his brief states "This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws it may choose." This premise is repeated at several places in Petitioner's brief. Respondent fully agrees with Petitioner on this principle. Respondent believes that it demands an affirmative answer to the question set forth in the preceding paragraph. Alabama was free to construe the Georgia Act as it saw fit. Alabama had made that choice in **Singleton v. Hope Engineering Co.**, supra. If this Court answers the question in the affirmative then it must affirm the District Court and Court of Appeals.

If answered in the negative, Alabama, as the forum of this action, would be denied the right to decide the extent to which it wished to apply the law of Georgia. Alabama would be denied the right to adopt the construction of the Georgia statute as declared by Georgia courts and give it full faith and credit in Alabama Courts. A District Court in Alabama would be denied the right to declare void the decision of an Alabama trial court which failed to follow the principles of full faith and credit previously adopted by the Alabama Supreme Court.

This is not a case where the forum state was faced with the question whether the Full Faith and Credit Clause **required** it to adopt a sister state's cause of action or construction of that cause of action. Nor is it a case where an Act of a sister state is advanced as a defense to an action under the Act of the forum state. Instead, it is a case where the forum state's consideration of the enforcement of an Act of a sister state was based on a voluntary election by the forum state to follow the sister state's own construction of its cause of action.

Crider, the Petitioner, was employed by Lawler, a Georgia employer, to work in Alabama where he was injured. Both were under and subject to the Workmen's Compensation Law of the State of Georgia[1] (R. 11). Like-

[1] Ga. Code, Title 114, Workmen's Compensation, Sec. 114-411. "Accidents outside of State.—Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title."

wise, Crider and Lawler were under and subject to the Workmen's Compensation Law of Alabama as Alabama will apply its Compensation Law to an injury occurring in the State of Alabama[2] (Appendix B).

Petitioner, injured in Alabama, had a right of action under both the Alabama and Georgia Compensation Laws. There is now no question that Alabama can exercise its choice of conflict of laws to disregard Chapter 114-103 of the Georgia Code which seeks to exclude to the Georgia employees all remedies other than those under its Act. Respondent has never and does not now contend that this section is binding on Alabama. Nor did the District Court and the Court of Appeals consider nor rest their decisions upon this section.

Carroll v. Lanza, 349 U. S. 408, 99 L. Ed. 1183, 75 S. Ct. 804 permits Alabama to disregard this section and to allow the employee injured in Alabama a right of action under the Alabama Workmen's Compensation Law. If petitioner had not abandoned his action under the Alabama Act, the Alabama Courts would have completely disregarded Section 114-103 of the Georgia Act and permitted him to proceed with his action under Alabama law. But Petitioner elected to proceed in the Alabama court under the Georgia Act.[3] The Alabama court was then faced with the question of the full faith and credit to be extended the Georgia Act. And **Carroll v. Lanza**, supra, does not, as Petitioner contends, prohibit Alabama

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[2] 99 C. J. S., Workmen's Compensation, Section 22.

[3] Petitioner's complaint was first filed in three counts. Count 1 was a claim under the Alabama Workmen's Compensation Act. Counts 2 and 3 were not alleged to be under the Act but were by an employee against his employer (R. 15-18). Petitioner then amended his complaint by adding Count A, a claim under the Georgia Workmen's Compensation Act, and by striking Counts 1, 2, and 3 (R. 11, 12). The judgment was based on the amended complaint containing the claim under the Georgia Workmen's Compensation Act (R. 13, 14).

from choosing to extend full faith and credit to the Georgia Courts in their construction of their Act in such a situation.

Alabama, as the forum, may choose the extent to which it will apply this foreign law, **Magnolia Petroleum Co. v. Hunt**, 320 U. S. 430, 88 L. Ed. 149, 64 S. Ct. 208, subject to the well settled rule "that where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." **Tennessee Coal I. & R. Co. v. George**, 233 U. S. 354 at 359, 58 L. Ed. 997, 34 S. Ct. 587. See also **Pollard v. Bailey**, 20 Wall. 520, 22 L. Ed. 376; **Stewart v. Baltimore & Ohio R. Co.**, 168 U. S. 445, 42 L. Ed. 537, 18 S. Ct. 105; and **Galveston H. & S. A. R. Co. v. Wallace**, 223 U. S. 481, 56 L. Ed. 516, 32 S. Ct. 205.

The Georgia Workmen's Compensation Law fits this rule, and as pointed out in Section II of this brief, Respondent contends that there was no other choice that Alabama could make in regard to the enforcement of the Georgia Act than that which it previously had made voluntarily. The method of enforcement of the rights conferred by the Georgia Workmen's Compensation Act is an exclusive one which can be afforded only by the Georgia State Board of Workmen's Compensation (formerly named Industrial Board) in a proceeding brought before it as the statute provides (Chapter 114-706, Appendix C).

Petitioner in his brief misleads this Court by failing to advise that the Alabama Supreme Court, prior to the judgment of the DeKalb County Circuit Court, had chosen and declared the extent the remedy of the Georgia Workmen's Compensation Act would be applied in Alabama. The Alabama Supreme Court in **Singleton v. Hope Engineering Co.**, 223 Ala. 538, 137 So. 441 sustained a demurrer to a complaint which sought enforcement of a claim under the Georgia Workmen's Compensation Act. This deci-

sion extended full faith and credit and adopted the Georgia Court decisions construing the Georgia Act by holding as follows:

> "The demurrer points out that the courts in this state have no jurisdiction because the several litigable issues of fact arising under the Georgia statute are vested exclusively under the Georgia Workmen's Compensation Commission . . . The right sought to be enforced had its origin and existence in the Georgia Workmen's Compensation statute. The remedies for its breach are recoverable in the manner provided by proper pleadings and procedure before the Industrial Commission of our sister state." 137 So. at p. 443.

The Alabama Supreme Court thus elected not to enforce an action that could not be maintained in the Georgia courts. The DeKalb County Circuit Court was not free to apply its own choice of law. In failing to follow **Singleton v. Hope Engineering Co.**, supra, its decision was void as it had no jurisdiction of the subject matter.

Petitioner contends that the actions of the District Court (R. 23-25) and of the Court of Appeals for the Fifth Circuit (R. 28) in following **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 (5th Cir. 1947), conflicts with the holding of this Court in **Alaska Packers Asso. v. Industrial Acc. Com.**, 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518, supra; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, 306 U. S. 493, 83 L. Ed. 940, 59 S. Ct. 629, supra, and **Carroll v. Lanza**, 349 U. S. 408, 99 L. Ed. 1183, 75 S. Ct. 804, supra. There is no conflict. The fact situations and legal issues are different.

In **Alaska Packers Asso. v. Industrial Acci. Com.**, supra, an employee was employed in California but was injured in Alaska. Action was brought under the California Work-

men's Compensation Act. The inquiry of this Court was whether a defense under the Alaska Act could be asserted in the California action under California law. This Court answered in the negative. This case merely stands for the proposition that the state of employment may apply its own law to an action brought in its courts by a workman injured elsewhere and does not have to apply the law of the state of injury. The case is no authority for the case at bar. Alabama is the state of the injury, not the state of employment. The judgment was not based on Alabama law, but on Georgia law.

In **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, *supra*, an employee who had been employed in Massachusetts was injured in California. Action was brought this time in the place of injury, California, and under the California Workmen's Compensation Act. The question was whether an exclusive provision of the Massachusetts Act prevented the forum and place of injury from applying its own Act. This Court held "that the full faith and credit clause does not **require** one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, . . .", 306 U. S. at 502. (Emphasis supplied.) This case differs from the **Alaska Packers** case for here the action was brought in the state of injury under its Act. Again this Court held that the local Act could be applied even though the Act of the place of employment had an exclusive remedy provision. The case at bar does not fit this holding. True, the action was in the place of injury, Alabama, but was not under Alabama law.

In **Carroll v. Lanza**, *supra*, an employee of Missouri was injured in Arkansas. He was receiving payments under the Missouri Workmen's Compensation Act when he filed a common law action in Arkansas against a third party. This Court had before it the question whether the

Full Faith and Credit Clause made an exclusive provision of the Missouri Act a bar to Arkansas' common law action in the situation where the Missouri award was not final. This decision like the two preceding is not applicable to the case at bar as the cause of action was not brought under the law of the forum.

All three of the cases just mentioned, **Alaska Packers Asso. v. Industrial Acci. Com.**, supra; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, supra; and **Carroll v. Lanza**, supra, have two features in common. The causes of action asserted are under the law of the forum. Second, there is asserted as a defense in the action in the forum a provision of a statute of another state making a cause of action in the foreign state the exclusive remedy available to the plaintiff. Both of these features distinguish these three cases from the case at bar and from **Green v. J. A. Jones Const. Co.**, supra. In the case at bar the action was not under the law of Alabama, the forum, but was under the law of Georgia. Nor was the exclusive remedy provision in the Georgia Act claimed as a bar to an action under the Alabama Act. As asserted previously, Petitioner voluntarily abandoned his cause of action under the Alabama Workmen's Compensation Act in favor of a cause of action under the Georgia Act.

In **Green v. J. A. Jones Const. Co.**, supra, the suit was brought in a Mississippi Circuit Court and thereafter removed to a District Court. The action was not under the Mississippi Workmen's Compensation Act, but was brought under the Georgia Act. The District Court, sitting as a Mississippi court, adopted the construction of the Georgia Act as determined by Georgia courts.

On pages 6 and 7 of his brief, Petitioner states that the **Green** decision ran afoul of **Carroll v. Lanza**, supra, and argues falaciously that the District Court and Court of Appeals refused recovery by applying the provision of the Georgia Act making an action under the Georgia Act an

exclusive remedy. Petitioner misconstrues the holding of the **Green** case. The District Court and Court of Appeals denied recovery solely on the ground that Georgia had provided that the enforcement of **an action under its Act** could only be by a proceeding before the Georgia State Board of Workmen's Compensation. The provision for liability claimed under that Act was coupled with an exclusive administrative remedy.

The **Green** case and the District Court and Court of Appeals in the case at bar did not decide nor hold that Crider's cause of action for his injury was limited solely to an action under the Georgia Workmen's Compensation Act. Certainly the Alabama trial court in this case was free to apply the Alabama Workmen's Compensation Act. The District Court and Court of Appeals as did the Court in **Green v. J. A. Jones Const. Co.**, supra, simply held that Crider having by his own free will and choice elected not to proceed under the Alabama Act, could not proceed under the Georgia Act in an Alabama court for the Georgia Act is administered by an Industrial Board and not by the courts. Choosing the right afforded by the Georgia Act he was relegated to the remedy afforded by that Act, namely a proceeding before the Georgia State Board of Workmen's Compensation.[4]

The present action presents the same situation. Petitioner elected to bring his action in the place of injury, Alabama, but elected to attempt pursuit of the right of action afforded by the Workmen's Compensation Act of

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[4] "The Georgia decisions settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides . . . This being so, it is quite clear that the case is ruled by the principle that where the provision for the liability claimed is coupled with a provision for a special remedy to be afforded not by a court but by a commission, that remedy and that alone must be employed and resort to court action may not be had for relief." 161 F. 2d at 359

the place of employment, Georgia. The Georgia Act provides an exclusive remedy for enforcement of its Act. Alabama would not be **required** under the Full Faith and Credit Clause to enforce this remedy in its courts. **Pacific Employers Ins. Co. v. Industrial Accl. Com.**, supra. Nor would Alabama in an action under the Alabama Act, have been barred by the provision of the Georgia Act making an action under its Act the exclusive remedy for Georgia employees.

Alabama, however, had **elected** when applying the Georgia Compensation Act, to extend full faith and credit to the exclusive method of enforcement afforded by the Georgia statute and decisions. The DeKalb Circuit Court in failing to follow the Alabama Supreme Court rendered a void judgment.

Petitioner devotes much of his brief to the argument that the DeKalb County Circuit Court weighed certain "considerations" and "governmental interests" prior to awarding judgment under the Georgia Act. This is a figment of Petitioner's imagination as the judgment of that Court (R. 13, 14) states no such "considerations." On page 9 of his brief Petitioner lists these "considerations." These would have been ample to empower the Alabama Court to assume the action brought by Petitioner under the Alabama law. But the Alabama court was not asked to make this choice of law decision. Strangely the Petitioner decided to cast aside these "considerations" and others including benefits,[5] and chose to proceed under the Georgia Act. The Alabama court did not have before it the question whether to apply the Alabama Act or the

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[5] Compensation benefit under the Georgia Law (Ga. Code. Title 114, Sec. 404) was limited to $10,000. Benefits under the Alabama Workmen's Compensation Law would have amounted to $11,200. 1940 Ala. Code, Title 26, Sec. 279 (e) 3 and Sec. 289 (400 weeks at the rate of $28.00 per week).

Georgia Act. Hence, the Alabama Court had no reason to weigh the "governmental interests" of Alabama against those of Georgia. Petitioner had a remedy under the Alabama Act. If he becomes a public charge, it is because he chose to abandon that remedy.

Petitioner also argues that Georgia has dictated the extraterritorial effect of its Statute to Alabama. We have already indicated that Alabama voluntarily elected the effect to give to the Georgia Act.

Nor has Mississippi dictated the choice of law rules to be followed by Alabama as Petitioner states on page 15 of his brief.

Petitioner also states on page 15 of his Brief, that Mississippi had desired to recognize as a defense the exclusive remedy provision of the Georgia Statute. This is incorrect. Mississippi chose to recognize that the method of enforcement of the Georgia Act was exclusive as Georgia afforded enforcement only by the State Board of Workmen's Compensation. Mississippi chose to recognize that right and remedy under the Georgia Act are inseparable.

Petitioner further states on page 15 that it was not the policy of Alabama to do as Mississippi did in **Green** and recognize the exclusive method of enforcement of the Georgia Act. This is patently false. Alabama made the same choice in **Singleton v. Hope Engineering Co.**, 223 Ala. 538, 137 So. 441. This court has recognized the right of Alabama and Mississippi to make this choice of conflict of law rules, **Wells v. Simonds Abrasive Co.**, 345 U. S. 514, 97 L. ed. 1211, 73 S. Ct. 856. Therefore, **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra, is complete authority for the action of the District Court and the Court of Appeals of the Fifth Circuit in this case.

II.

Where the Provision for the Liability Claimed Is Coupled With the Provision for a Special Remedy to Be Afforded Not by a Court But by a Commission, That Remedy Alone Must Be Employed and Resort to Court Action May Not Be Had for Relief.

The DeKalb County Circuit Court judgment in denying full faith and credit to the Georgia construction of its Workmen's Compensation Act, was void for a reason other than it failed to follow the choice of law rules of the Alabama Supreme Court.

Respondent concedes that Georgia may not require Alabama to give to a Georgia employee injured in Alabama a remedy only under the Georgia Act. But Respondent does contend that an action cannot be brought in Alabama courts under the Georgia Act, as the full Faith and Credit Clause requires Alabama to give full faith and credit to the administrative remedy prescribed in the Georgia Act by which the action may be enforced.

The Full Faith and Credit Clause is subject to certain minimum requi ements. **Wells v. Simonds Abrasive Co.**, 345 U. S. 514, 9. L. ed. 1211, 73 S. Ct. 856. In compliance with these mi imum requirements, a foreign compensation act cannot be enforced in the courts of the place of injury when the foreign compensation act provides for the remedy to be enforced by an administrative commission or board, rather than in the courts. **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 illustrates this:

> "Appellant's reliance on Floyd v. Vicksburg Cooperage Co., 156 Miss. 567, 569, 126 So. 395, holding that a suit may be brought in Mississippi to enforce the Louisiana Workmen's Compensation Act will not do. 'The Louisiana Compensation Law provides for its enforcement in the courts of that state' and 'The

liability created is enforceable in the courts of another state'; United Dredging Co. v. Lindberg, 5 Cir., 18 F. 2d 453, 454. The Georgia statute sought to be enforced here 'commits the enforcement of its provisions to an administrative board, whereas the Louisiana statute is required to be administered by the courts,' Id., 18 F. 2d 454, 455."

This is an application of the well-settled principle applied in cases where the foreign act unites the right with a special remedy. **Tennessee Coal, I & R Co. v. George,** 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587, states this principle:

> "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that 'where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed.'" 233 U. S. at 359.

Of like import are **Pollard v. Bailey,** 20 Wall. 527, 22 L. ed. 376; **Stewart v. Baltimore & Ohio R. Co.,** 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Galveston, H. & S. A. R. Co. v. Wallace,** 223 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205.

American Law Institute's Restatement, Conflict of Laws, is in accord with these holdings.[6]

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[6] Restatement, Conflict of Laws, Sec. 618, Conditional Cause of Action.—"If a state makes the existence of a cause of action conditional on some act or event, no suit can be maintained in another state unless the condition is satisfied." "Comment: a. Where a statutory foreclosure act requires that the land must first be applied to the satisfaction of the debt before a cause of action arises, no action will lie in another state to recover the amount due until the land has first been applied to the satisfaction of the debt. *So where a Workmen's Compensation Act provides for the fixing of the amount of compensation by a commission, no action can be brought on such a claim in another state until the amount of compensation has been so fixed*" (Emphasis supplied).

The textwriters agree that a claim to be valid must follow the designated procedure, and under the requirement that only the special tribunal created by the particular state can administer claims thereunder, rights created by the compensation act of one state cannot ordinarily be enforced in another state or in a Federal Court.[7]

Many jurisdictions have refused to apply the Compensation Law of another state where the statute of the other state provided that the law be administered by an Industrial Commission or Workmen's Compensation Board.[8]

The United States Court of Appeals for the Tenth Circuit[9] has recognized the rule of **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra.

In the case of **Grenier v. Alta Crest Farms** (Ver.), 58 A. 2d 884, the plaintiff brought a suit against the defendant claiming compensation under the Workmen's Compensation Act of Massachusetts before the Industrial Rela-

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[7] Larson's Workmen's Compensation Law, Sec. 84.20, Page 356.

[8] Singleton v. Hope Engineering Co., 223 Ala. 538, 137 So. 441 (1931) (Alabama refused to apply the Georgia Act);
Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 (Arkansas refused to apply the Oklahoma Act);
Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 (Connecticut refused to apply the Massachusetts Act);
Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 (Missouri refused to apply the Kansas Act);
Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 (Tennessee refused to apply the Florida Act);
Johnson v. Employers Liability Assur. Corporation, 99 S. W. 2d 979 (Texas refused to apply the Louisiana Act);
Elliott v. DeSoto Crude Oil Purchasing Corporation, 20 F. Supp. 743 (W. D. La.) (Louisiana refused to apply the Texas Act);
Grenier v. Alta Crest Farms, 58 A. 2d 884 (Vermont refused to apply the Massachusetts Act).

[9] See Fresquez v. Farnsworth & Chambers Company, 238 F. 2d 709 (10th Cir. 1956), where the Court says at p. 712: "But where a statute creates a right and provides a remedy for its enforcement in a certain tribunal, and the two are inseparably blended and united, the right can be enforced only in the specified tribunal. Pollard v. Bailey, 20 Wall. 520, 22 L. ed. 376; Tennessee Coal, Iron & Railroad Co. v. George, supra."

tions Board of Vermont. Massachusetts had an Industrial Board. The Vermont Court held that the Vermont Board of Industrial Relations and the courts of Vermont did not have jurisdiction of the case.[10]

As was held in **Mosely v. Empire Gas & Fuel Co.**, 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223, a statute of Kansas cannot confer upon a Missouri court in a suit for money, a jurisdiction and a power wholly unknown to the Missouri Code of procedure. Such a statute cannot do this directly nor can it do so indirectly through an attempted authorization of the Missouri Court to make rules necessary and appropriate to carry out the purpose of the Kansas statute. By that statute the right and remedy are so united, and the provision of liability is so coupled with a provision for a special remedy to be administered by

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[10] The Vermont Court at p. 888 correctly stated the appropriate principle: "* * * While the statute gives a right to compensation to an employee who comes within its terms; it also provides a specific and exclusive remedy for the enforcement of that right before a special tribunal created for such purpose. If an employee seeks the benefits given him by the statute he is bound to recognize and perform the obligations thereby placed upon him. Such right is limited and can be enforced only by following the procedure given by the statute which created such right. The remedy is an integral part of the right given and the latter has no existence separate and apart from the former. United States ex rel. Texas Portland Cement Co., etc. v. McCord, 233 U. S. 157, 34 S. Ct. 550, 552, 58 L. ed. 893; Galveston H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 490, 32 S. Ct. 205, 56 L. ed. 516; Globe Newspaper Co. v. Walker, 210 U. S. 356, 28 S. Ct. 726; 52 L. ed. 1096; Fourth Nat. Bank v. Francklyn, 120 U. S. 747, 756, 7 S. Ct. 757, 30 L. ed. 825; Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. ed. 376; Hartford Accident & Indemnity Co. et al. v. Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634, 78 L. ed. 1178, 92 A. L. R. 928; Devine's Case, 236 Mass. 588, 592, 593, 129 N. E. 414, 416; Migue's Case, 281 Mass. 373, 183 N. E. 847, 848."

* * * * * * * *

"It follows that the commissioner of industrial relations is without jurisdiction to entertain the petition filed with him in the case at bar. The employee has no right arising under the Massachusetts Workmen's Compensation Act, * * * which he can enforce before the commissioner or the courts of this state."

designated tribunal with certain specific powers given that the remedy must be sought in the designated tribunal.

The application of this principle to actions under Workmen's Compensation Acts is similar to the familiar principle that one must exhaust the administrative remedies provided for enforcement of his cause of action before he can resort to the courts.

This Court applied this principle in **Transcontinental & West. Air v. Koppal**, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906, denying recovery to an employee in an action for wrongful discharge brought under the Railway Labor Act. The employee could have brought an action under either the Missouri law or under the Federal Act. But he could not do so until he had exhausted his administrative remedies for the Missouri law so provided.

In this case, Petitioner cannot resort to the Courts of Alabama to enforce his right of action under the Georgia Workmen's Compensation Act for with that Act there is provided an administrative remedy. This administrative remedy must first be exhausted before the court of any state can give him relief.

To illustrate the reasoning for this rule of requiring exhaustion of administrative remedies before resorting to the courts in these cases where right and remedy are so coupled as to be united, Respondent would like to draw the Court's attention to certain provisions of the Georgia Workmen's Compensation Act, Chapter 114. All of the sections listed below give the State Board of Workmen's Compensation broad discretionary rights. The pertinent portions of these sections are set out in Appendix D to this brief.

The Board can excuse the giving of notice of an accident to an employer (Sec. 303). Claims must be filed with the Board (Sec. 305). The Board may stop compensation to an employee who refuses to work when employment is

procured for him (Sec. 407). Certain elements of proof in a hernia claim must be made to the Board's satisfaction (Sec. 412). The Board may apportion compensation (Sec. 414), may deduct improper payments (Sec. 415), may alter the period of payments (Sec. 416), may make a lump sum award (Sec. 417), may select a trustee (Sec. 418), may decide between disputing claimants (Sec. 420). The Board appoints guardians (Sec. 421).

The Board determines the necessary medical treatment and selects the physicians (Sec. 501) and may order a claimant to be examined before a designated physician (Sec. 503).

The Board formulates the necessary rules (Sec. 703), prepares and furnishes blank forms (Sec. 704), and decides all questions arising under the Act (Sec. 715). Agreements must be filed with the Board (Sec. 705). The Board conducts hearings on disputed claims (Sec. 706), makes awards (Sec. 707), and reviews previous awards (Sec. 709).

The Board fixes the fees of attorneys, physicians, and hospitals (Secs. 713 and 714).

Alabama has no comparable board to administer the cause of action under the Georgia Act. How can Alabama courts enforce this remedy? They cannot, and it would be utterly futile for them to attempt to do so. The administration by the Georgia Board is so much a part of the cause of action that it cannot be separated.

Petitioner states that **Pearson v. Northeast Airlines, Inc.**, 309 F. 2d 553 (2nd Cir. 1962) is contrary to **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra. The **Pearson** case permitted New York in trying an action under the Massachusetts wrongful death law to disregard the limitation on damages placed by Massachusetts on the cause of action. This is not in anywise comparable to the present case. In **Pearson**, there was no contention that New York courts could not enforce the Massachusetts

cause of action. Here, Alabama courts have no jurisdiction to enforce the Georgia Act which provides for administration by an Industrial Board. Furthermore, such enforcement would conflict with public policy of Alabama. In **Pearson**, New York offered plaintiff no cause of action under its own law, not being the situs of injury. The transitory cause of action under Massachusetts law was the only remedy open to plaintiff in New York. Here, there was a cause of action open to petitioner both under Alabama and Georgia law.

In **Pearson**, the court allowed New York to separate the limitation on damages from the enforcement of the cause of action. Damages is only one aspect of a cause of action. You can separate in a wrongful death action the giving of the cause of action from the limitation on damages. This is entirely different from separating the cause of action from the method of its enforcement. If a cause of action is to be enforced before an administrative board, the right and remedy are united. When they are separated, the entire cause of action becomes a new and different creature from what its creator intended. If the wrongful death action of Massachusetts was administered purely by an administrative agency of Massachusetts and no resort to court action was provided, there would be no **Pearson** holding. New York would have had no jurisdiction of a cause of action under such a Massachusetts statute.

Petitioner's reliance upon the Pearson case is a comparison of a cake and its frosting in an attempt to make a conflict where there is none. There is no conflict between **Pearson** and **Green**. The reasoning underlying **Pearson** does no violence to the reasoning of the **Green** case. The two cases involve different legal issues and to try to equate the two is to say that night is the same as day.

Petitioner also cites the case of **Kilberg v. Northeast Airlines, Inc.**, 9 N. Y. 2d 34, 172 N. E. 2d 526 which in-

volved the same question decided in the **Pearson** case. The **Kilberg** case is stated to be authority for the proposition that the law of the forum controls in determining what is procedural and what is substantive. Although the **Kilberg** case did not rest its holding upon a determination that the limitation on damages was a procedural question, Respondent does not quarrel with this general statement of law.

Respondent urges this Court to review the Georgia Act and decisions. The administrative remedy is mandatory, not permissive, as Petitioner argues. See Chapter 114-706, Georgia Code, and the following Georgia decisions: **Grice v. United States Fidelity & Guaranty Company**, 187 Ga. 259, 200 S. E. 700; **Blue Bell Globe Mfg. Co. v. Baird**, 64 Ga. App. 347, 13 S. E. 2d 105; **Echols v. Chattanooga Mercantile Co.** (Ga. App.), 38 S. E. 2d 675.

When an administrative remedy is coupled with the cause of action, both are so dependent upon one another, so strongly united, that they cannot be separated. It may be that both are substantive regardless of the reasoning, this Court recognized in **Tennessee Coal, I. & R. Co. v. George**, 233 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205, that where right and remedy are so united, "the right cannot be enforced except in the manner and before the tribunal designated by the act," 233 U. S. at 359. The **George** case was cited by Petitioner as holding that Georgia cannot determine jurisdiction of Alabama courts. Conceding this, the case does illustrate the situation where a sister state has so united right and remedy that a forum state cannot make a distinction between what is procedural and what is substantive. In **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, supra, Alabama followed this principle by holding that the remedy for enforcing the Georgia Act was substantive in concert with the cause of action itself.

Petitioner contends that the inability of the Alabama court to apply the Georgia Act will deny Petitioner a recovery and that he may become a public charge. If this were true, it would be a bed of Petitioner's own making. Petitioner first chose the law of Alabama, the place of injury (R. 15-18). He could have recovered thereunder. He then abandoned Alabama law (R. 12). He chose next to proceed under Georgia law (R. 11, 12). The Georgia law is administered by a State Board of Workmen's Compensation. Even Georgia courts cannot administer the Georgia Act.

As was said by the District Court to permit this original action in the Courts of Alabama to enforce a claim under the Georgia Workmen's Compensation Law is to allow an original proceeding in such courts where the same is denied to the Courts of Georgia.

Surely this result as contended by Petitioner would result in Alabama using the law of its sister state, Georgia, to reach a result never intended by Georgia legislators. The Alabama trial court did not have jurisdiction to make an award under the Georgia Workmen's Compensation Act. Its judgment is void for that reason.

Giving jurisdiction to Alabama Courts to enforce a Georgia prescribed administrative remedy would place a strain on the Full Faith and Credit Clause which would separate it from its minimum requirements.

III.

A Party or His Privies Will Be Permitted to Attack a Judgment Collaterally Where the Judgment Is Void for Want of Jurisdiction of the Court Over the Subject Matter.

The DeKalb County Circuit Court did not have jurisdiction of the subject matter. Therefore, the issue of

jurisdiction is subject to inquiry. Judgments of courts can be impeached for jurisdictional defects disclosed on the face of the record. Where the record discloses a lack of jurisdiction the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 607; **Murphy v. Louisville & N. R. Co.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

It clearly appears on the face of the record that in the DeKalb County Circuit Court in which the judgment was obtained the judgment was rendered under the Workmen's Compensation Law of the State of Georgia. In fact, the complaint claims under the Workmen's Compensation Law of the State of Georgia and proof was made to the court under the Workmen's Compensation Law of the State of Georgia. The judgment was void for want of jurisdiction of the DeKalb County Circuit Court. Therefore, the judgment could be assailed in the District Court.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norville**, 227 Ala. 621, 151 So. 576.

Jurisdiction of a court over the subject matter is at all times open to inquiry either on appeal or when the judgment rendered is attacked collaterally, and no consent, laches or solicitation of the parties can cure such defect. **City of Birmingham v. Reed**, supra.

The Alabama Court in the case of **Murphy v. Louisville & N. R. Co.**, supra, held at So. page 5.

> "Where the court is without jurisdiction of the res—the subject matter— * * * it is without jurisdiction as a matter of law and its finding is not *res judicata.*"

And in the case of **Crump v. Knight**, supra, the Court stated at So. page 627: "Courts acting without authority

can impart no validity to their proceedings and their judgments are assailable in any proceeding."

It is axiomatic that the judgment of the Circuit Court of DeKalb County is void and could be attacked in this case. The Alabama Court in the case of **Woolf v. McGaugh**, 175 Ala. 299, 57 So. 754, quoting with approval the statement from **Freeman v. McBroom**, supra, had this to say at page 945:

> "It has frequently been held, in suits at law, that when the court has no jurisdiction of the subject matter in dispute, such want of jurisdiction cannot be waived by appearance, plea, consent, or in any other manner, and a judgment rendered in such case is favor of the plaintiff will be void."

IV.

When a Judgment of a State Court Comes Under Consideration in a Court of the United States the Question of Jurisdiction of the State Court to Render the Judgment Is Open to Inquiry in The United States Court.

State Court jurisdiction may be attacked in a Federal Court in a suit upon the judgment of the state court. **Cooper v. Newell**, 173 U. S. 555, 43 L. Ed. 808, 19 S. Ct. 506; **Tilt v. Kelsey**, 207 U. S. 43, 52 L. Ed. 95, 28 S. Ct. 1.

In a suit in a United States Court on a judgment of a court of one of the states, full faith and credit requires the enforcement of the judgment and prevents it from being collaterally attacked unless it is shown that the judgment was entered without jurisdiction. **New York v. Halvey**, 330 U. S. 610, 91 L. Ed. 1133, 67 S. Ct. 903; **Griffin v. Griffin**, 327 U. S. 220, 90 L. Ed. 635, 66 S. Ct. 556; **Adam v. Saenger**, 303 U. S. 59, 82 L. Ed. 649, 58 S. Ct. 454; **Merrell v. United States**, 140 F. 2d 602 (10th Cir., 1944).

The **Halvey** case had this to say, 330 U. S. at 614:

> "If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause."

The Court of Appeals' judgment was not in error in denying "full faith and credit" to the **void judgment** of the Circuit Court of DeKalb County, Alabama. After all, the Federal Courts were doing nothing more than the Jefferson County Circuit Court did when Petitioner first filed his suit on the judgment there. That state court also ruled that suit on the DeKalb County Circuit Court judgment could not be maintained (Appendix A) following the holdings in **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, and **Green v. J. A. Jones Construction Co.**, 161 F. 2d 359.

CONCLUSION.

Petitioner raised certain questions for the consideration of this Court. As we have demonstrated in this brief, all of these questions are answered against the contentions of the Petitioner.

The DeKalb County Circuit Court was not free to enforce the Georgia Workmen's Compensation Act. It was bound to follow the prior holding of the Alabama Supreme Court. Nor was the Alabama Supreme Court free to enforce the Georgia Act because Alabama had no method of enforcement of the administrative remedy provided by the Georgia Act.

The actions of the Courts below did not deny to Alabama freedom to adopt such rules governing conflicts of laws as it chose. The Alabama Supreme Court had already made such a choice and the actions of the Courts below merely implemented this choice.

The Court of Appeals' decision did not deny to Alabama the right to determine what aspects of Georgia law were procedural, and what aspects were substantive. The procedure-substantive law question is not involved in the question whether Alabama courts may enforce the administrative remedy of the Georgia Act. This administrative remedy was so coupled with the right of action itself that they could not be separated. The Alabama courts had no jurisdiction of the subject matter of the Georgia Compensation Act. The action of the Court of Appeals in refusing to enforce the judgment of the DeKalb County Circuit Court was proper. The Full Faith and Credit Clause does not require either a state or federal court to enforce a judgment of another court which is void for want of jurisdiction of the subject matter.

Time has honored the decisions of this Court, of lower federal courts, and of courts of the various states holding that a right which is created to be enforced only before a special administrative tribunal must be enforced only before that special tribunal. No court has jurisdiction of the right. The Jefferson County Circuit Court, the District Court for the Northern District of Alabama, and the Court of Appeals for the Fifth Circuit all adhered to this precedent when they ruled void the judgment of the DeKalb County Circuit Court which flew in the face of this precedent by assuming such jurisdiction in place of the administrative board of Georgia.

The Full Faith and Credit Clause does not **require** nor **permit** the courts of a forum state to assume jurisdiction of a cause of action under the Workmen's Compensation Act of a sister state which has provided that its Act be enforced by an administrative board. A holding otherwise would create insurmountable practical difficulties. If this Court rules in favor of Petitioner it will permit Alabama courts in enforcing a Georgia Act to do under the

guise of the Full Faith and Credit Act what Georgia has not permitted its own courts to do.

Respondent respectfully urges this Court to affirm the action of the Court of Appeals of the Fifth Circuit.

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FOSTER ETHEREDGE,
First National Building,
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Attorney for Respondent.

Of Counsel:

OLLIE L. BLAN, JR.,
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Proof of Service.

I, Foster Etheredge, one of the attorneys for Zurich Insurance Company, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of September, 1964, I served copies of the foregoing Respondent's Brief on the Merits on the Petitioner by depositing the same in a United States Post Office with first-class postage prepaid, addressed to J. Terry Huffstutler, counsel of record for the Petitioner, at his Post Office address, First National Building, Birmingham, Alabama 35203.

.....

Foster Etheredge,
First National Building,
Birmingham, Alabama,
Attorney for Zurich
Insurance Company.

APPENDIX A.

Case of Thomas J. Crider v. Zurich Insurance Company.

In the
Circuit Court of Jefferson County, Alabama.

Complaint.

Thomas J. Crider,
Plaintiff.
vs.
Zurich Insurance Company, a Corporation,
Defendant.
No. 48637-X.

Count 1:

Plaintiff claims of the defendant the sum of Ten Thousand Five Hundred Dollars ($10,500.00) together with interest at the rate of six percent (6%) per annum from February 11, 1959, for that plaintiff obtained a judgment in the Circuit Court of the Ninth Judicial Circuit of Alabama at Fort Payne, Alabama, on February 11, 1959, for the amount of Ten Thousand Five Hundred Dollars ($10,500.00) together with costs of court in the amount of One Hundred Dollars ($100.00) against his employer, A. H. Lawler Construction Company, a corporation, for injuries received by the plaintiff on July 11, 1956, while performing duties for his employer within the line and scope of his employment in DeKalb County, Alabama, and plaintiff avers that the defendant Zurich Insurance Company was the insurer of the said A. H. Lawler Construction Company, Inc., a corporation, for liability on workmen's compensation and for the injuries and damages which plaintiff sustained on said occasion. And plaintiff

avers that, under the said contract of insurance existing on said occasion between the defendant and the said A. H. Lawler Construction Company, Inc., a corporation, the defendant agreed that it could be sued by any person who had secured a judgment such as the one obtained by plaintiff against the said insured, A. H. Lawler Construction Company, Inc., a corporation.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

Zurich's Plea and Answer.

Comes the defendant and for plea and answer to the Complaint filed in this cause, and to each count thereof, separately and severally, and sets down and assigns, separately and severally, the following separate and several pleas:

Plea One: Not guilty.

Plea Two: The allegations of said count are untrue.

Plea Three: That the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the Judgment described in said Complaint and the Judgment is null and void.

Plea Four: Defendant avers that the Judgment described in plaintiff's Complaint was rendered by the Circuit Court of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Complaint as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked "Exhibit A"[1] and "Exhibit B",[2] respectively, and made a part hereof as if fully set out

[1] (R. 11, 12, 15-18).

[2] (R. 13, 14).

herein at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter

of the suit in which the Judgment described in the Complaint was rendered, and the Judgment is null and void. Therefore, the Defendant says the plaintiff should not recover of the defendant.

Plea Five: For purposes of this Plea, defendant adopts all of the averments of Plea Four down to and including the words "most convenient for a hearing" and in lieu of the averments following the said quoted words, says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered and the Judgment is null and void. Therefore, the Defendant says that the Plaintiff should not recover.

Plea Six: Defendant avers that at all times mentioned in said Complaint and on the date of said Judgment it was the law of the State of Georgia, as contained in the Workmen's Compensation Law of that State, Title 114, Chapter

114-305, Georgia Code, Acts of the Georgia Legislature of 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter, except that if a claimant proceeds in good faith against a corporation, the character of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

For the purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter of the Complaint as Last Amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident, and defendant avers that the plaintiff did not file a claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended. Hence, the Judgment of the Circuit Court of DeKalb County, Alabama, is null and void and the plaintiff should not recover.

Plea Seven: For purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says as follows: That at all times mentioned in said Complaint and on the date of said Judgment it was the applicable law of the State of Georgia, as contained in the

Workmen's Compensation Law of that State, Title 114, Chapter 114-411, Georgia Code, Acts of the Georgia Legislature of 1920, page 187, that:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Defendant says that the accident described in said Complaint happened in the State of Alabama while the plaintiff, who was a resident of the State of Alabama, was employed in the State of Alabama. Defendant says further that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made in the State of Alabama. Defendant says that the plaintiff was not entitled to compensation under the laws of the State of Georgia, and defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award the plaintiff compensation under the law of the State of Georgia, and that the Judgment of said Court is void.

Plea Eight: For purposes of this Plea defendant adopts the first paragraph of Plea Four. Defendant says that the statutes and laws of the State of Georgia were not pleaded by the plaintiff in the Complaint as Last Amended, and defendant says that the Circuit Court of DeKalb County, Alabama, had jurisdiction only to apply the common law of the State of Alabama as being one and the same as the State of Georgia. Therefore the defendant says that the Circuit Court of DeKalb County, Alabama, did not have

jurisdiction to award compensation under the Workmen's Compensation Law of the State of Georgia, and not having jurisdiction of the subject matter of the suit the Judgment is void.

Plea Nine: For purposes of this Plea defendant adopts the first paragraph of Plea Four, and defendant says as follows: Further, it is the law of the State of Georgia Title 114, Chapter 114-305, Georgia Code, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Title 114, Chapter 114-411, Georgia Code:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Title 114, Chapter 114-706, Georgia Code:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to

compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered. Therefore, the Judgment is void and the plaintiff should not recover.

Plea Ten: For purposes of this Plea, defendant adopts all of the averments of Plea Nine down to and including the quoted words "be the most convenient for a hear-

ing" and in lieu of the averments following the said quoted words, says as follows: Defendant says that it issued to A. H. Lawler Construction Company a Workmen's Compensation Policy, No. 68-820, and a true and correct copy of said policy is attached hereto and marked "Exhibit C" and made a part hereof as if fully set out herein at this point. Defendant says that Item 3 of the Insuring Agreement of said policy provides that Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia, and defendant says that its policy did not apply to the Compensation Law of the State of Alabama, and defendant further says that the coverage afforded by its said policy did not apply to the accident described in plaintiff's Complaint.

Plea Eleven: For purposes of this Plea, defendant adopts all of the averments of Plea Ten down to and including the words "Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia", and defendant says as follows: The accident described in plaintiff's Complaint happened in the State of Alabama. The contract of employment was made in the State of Alabama, and the residence of the plaintiff Crider was in the State of Alabama. Defendant further says that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made expressly for service exclusively outside of the State of Georgia. The plaintiff was not entitled to compensation under the laws of the State of Georgia. Hence, the coverage afforded by defendant's said policy of insurance did not apply to the accident described in plaintiff's Complaint, and the plaintiff should not recover.

Plea Twelve: Defendant says that in its policy of insurance sued on, it is provided as follows:

"If claim is made or suit or other proceeding is brought against the insured, the insured shall imme-

diately forward to the company every demand, notice, summons or other process received by him or his representative."

The policy provides further that:

"No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, * * *."

Defendant says that the insured named in the policy, A. H. Lawler Construction Company, did not immediately forward to the Company every demand, notice, summons or other process received by it or its representative. Defendant says that it did not receive any notice of the plaintiff's suit in the Circuit Court of DeKalb County, Alabama. Therefore, defendant says that the plaintiff cannot recover.

Plea Thirteen: For the purposes of this Plea, defendant adopts all of the averments of paragraph one of Plea Four. Defendant says that plaintiff, on February 10, 1959, filed his amended complaint, which was an entirely new and different cause of action from that averred in the original complaint, a copy of which is attached hereto and marked "Exhibit D", and made a part hereof as if fully set out herein at this point, and that the Circuit Court of DeKalb County, Alabama, on February 11, 1959, rendered its Judgment of Court Awarding Compensation upon said Complaint as Last Amended, and defendant further says that the Complaint as Last Amended was never served upon A. H. Lawler Construction Company. Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction over the person of A. H. Lawler Construction Company, and the Judgment of that Court described in plaintiff's Complaint is void.

/s/ Spain, Gillon & Young,
Attorneys for Zurich Insurance Company.

Crider's Demurrer to Pleas of Defendant.

Comes the plaintiff and demurs to defendant's special pleas three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, and for grounds of demurrer, assigns separately and severally, the following:

1. Said pleas present an immaterial issue.

2. Said pleas confess the averments of the complaint but do not set up a sufficient defense to avoid said averments.

3. For that the averments contained in said pleas are conclusions of the defendant and do not state facts constituting defenses.

4. For that said pleas contain no averments that remove the judgment obtained in the Circuit Court of DeKalb County from the rule as to the conclusiveness of judgments rendered by Courts of competent jurisdiction in all kinds of judicial proceedings.

5. For that said pleas fail to make sufficient averments under the applicable law of this State to remove the judgment rendered by the Circuit Court of DeKalb County from the doctrine of res judicata.

6. For that said pleas fail to sufficiehtly aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment is conclusive as to all facts or issues decided therein and binds not only those who were parties to the litigation but also persons who are in privity with them.

7. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment on the merits rendered in a former suit between the same parties or their privies upon the same

cause of action, by a court of competent jurisdiction, is conclusive, not only as to all matters determined, but also is conclusive as to any matter which might or ought to have been litigated.

/s/ J. Terry Huffstutler,
/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

Crider's Amended Demurrer to Pleas of Defendant.

Comes the plaintiff and with leave of the Court first had and obtained amends its demurrer heretofore filed to the pleas of the defendant and separately and severally assigns the following separate and several grounds:

8. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a bald conclusion of the pleader.

9. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is an unauthorized conclusion of the pleader.

10. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a conclusion of law not authorized by any of the pleadings filed in this instant case.

11. Said plea 3 is insufficient in that it does not undertake to allege, state, or outline the facts on which the conclusion is made that the court had no jurisdiction to render the judgment described in said complaint.

12. Aught appearing to the contrary the trial court rendering said judgment had jurisdiction of said matter under the principles of comity obtaining in this state.

13. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Alabama.

14. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Georgia.

15. The mere union of substantive rights and procedural matters under the laws of the State of Georgia will not preclude the enforcement of the judgment secured by the plaintiff, it appearing that the foreign procedural provisions are not inseparably connected with substantive rights in order to preserve the integrity of such rights.

16. It affirmatively appearing that the defendant in the instant case was not a party to case No. 590 heretofore rendered by the Circuit Court of DeKalb County, Alabama, the defendant in the instant case cannot proceed in this cause under said plea 3, or plea 4, in that this defendant Zurich Insurance Company, a corporation, was not a party to said case No. 590.

17. Said plea 4, and the allegations therein constitute a collateral attack on the said judgment.

18. For that it affirmatively appears that the allegations in said pleas separately and severally, except plea 1 are not direct attacks on said judgment but are collateral attacks.

19. Each of said pleas, separately and severally, are deficient in that the defendant in case No. 590, in which A. H. Lawler Construction Company, Inc., a corporation, was the defendant and the only defendant is not joined as a party plaintiff or a party defendant in the instant case.

20. It appearing that the defendant in the instant case, No. 48637-X in this court and A. H. Lawler Construction Company, Inc., a corporation, were in privity one with

the other at the time of the accident complained of and at the time of the employment of the plaintiff by the defendant or its authorized servants or agents, said judgment rendered in case 590 cannot be attacked by them separately.

21. Each of said pleas, except the plea of the general issue, seek to stop the enforcement of the judgment sued on and are defective in that all parties to the judgment and all parties who will be directly affected if said judgment be declared void or set aside, are indispensable parties to the suit to set aside the said judgment.

22. Said judgment herein sued on is "res judicata" upon the employer and its privy, Zurich Insurance Company, a corporation, and the defendant in this case, and said judgment is therefore not subject to collateral attack.

23. For that it appears that said judgment herein sued on stands unreversed and is binding res judicata upon the parties thereto and their privies, including the defendant in the case at bar.

24. For that it affirmatively appears that the said judgment sued on cannot be collaterally attacked by the defendant in this case, since the facts pleaded show that the defendant in this instant case was in privity with the defendant in the case wherein the judgment sued on was rendered.

25. For that it appears that the judgment sued on was rendered in a court that had the right to decide as to its own jurisdiction and that its decision in favor of that jurisdiction, has the same effect and conclusiveness as its decision in any other matter and cannot be attacked collaterally.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

Orders of Court.

7-14-61: Demurrer to each of defendant's pleas is hereby overruled and this case is set for further pleading on August 16th, 1961, at 10:00 A. M. /s/ Ingram Beasley, Judge.

11-20-61: Plaintiff amends demurrer to defendant's pleas by adding grounds 8 through 25. /s/ Ingram Beasley, Judge.

2-16-62: Demurrer as last amended to defendant's pleas 3 through 13 is hereby overruled and this case is continued to Mar. 9th, 1962 at 11:00 A. M. for further pleading. /s/ Ingram Beasley, Judge.

3-13-63: Dismissed on motion of plaintiff without prejudice and all costs taxed against plaintiff. /s/ Ingram Beasley, Judge.

I, Julian Swift, Clerk of the Circuit Court, Tenth Judicial Circuit of the State of Alabama in and for the County of Jefferson do hereby certify the foregoing to be a true and correct copy of the court orders in this case. Recorded in Minute Book 277, page 211.

Witness my hand and seal this the 2nd day of March, 1964.

/s/ Julian Swift,
(Seal) Clerk, Circuit Court

APPENDIX B.

Workmen's Compensation Law of Alabama, Code of Alabama, Tit. 26, Secs. 297, 304.

§ 297. (7571) **Controversy submitted to circuit court; jury trial; appeal, etc.—A. Controversy submitted to circuit court.** In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. B. **Jury trial.** When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to

the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. C. **Court always open.** For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. D. **Adverse claimants.** If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. E. **Appeal by certiorari.** From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the supreme court or the court of appeals of Alabama (1919).

§ 304. (7578) **Procedure in cases of dispute.**—Either party to a controversy arising under articles 1 and 2 of this chapter may file a verified complaint in the circuit court of the county which would have jurisdiction of an action between the same parties arising out of tort, which shall set forth the names and residences of the parties and the circumstances relating to the employment at the time of the injury, with a full description of the injury, its nature and extent, the amount of the average earnings received by the employee which would affect his compensation under articles 1 and 2 of this chapter, the knowledge of the employer of the injury or the notice to him thereof, which must be of the kind provided for in articles 1 and 2 of this chapter, and such other facts as may be necessary to enable the court to determine what, if any com-

pensation the employee or in case of a deceased employee, his dependents, are entitled to under articles 1 and 2 of this chapter. The complaint shall be filed with the clerk of the circuit court who shall cause summons to be issued thereon requiring the defendant to come in and answer said complaint within 30 days of the service thereof. Thereafter said cause shall proceed in accordance with and shall be governed by the same rules and statutes as govern a civil action between the parties, except as otherwise provided in articles 1 and 2 of this chapter, and except that all causes filed hereunder shall be preferred causes and shall be set down and tried as expeditiously as possible. At the hearing or any adjournment thereof, the court shall hear such witnesses as may be presented by each party, and in a summary manner without a jury, unless one is demanded to try the issue of willful misconduct on the part of the employee, decide the controversy. This determination shall be filed in writing with the clerk of said court, and judgment shall be entered thereon in the same manner as in causes tried in the said circuit court, and shall contain a statement of the law and facts and conclusions as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due; but nothing herein contained shall be construed as limiting the jurisdiction of the supreme court or court of appeals to review questions of law by certiorari.

APPENDIX C.

Workmen's Compensation Law of Georgia
Ga. Code Ann., Chapter 114.

114-103. Other remedies excluded by this law.—The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury loss of service or death. (Acts 1920, p. 176.)

114-305. Time of filing claim.—The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply. (Acts 1920, p. 181; 1925, pp. 282, 284; 1931, pp. 7, 43.)

114-705. Agreements as to compensation, filing of.—If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If

approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified. (Acts 1920, p. 196; 1931, pp. 7, 43.)

114-706. Hearings regarding disagreements.—If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, or the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material and necessary to a fair and just adjudication of said issue

or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of the State; Provided that if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court. (Acts 1920, p. 197; 1931, pp. 7, 43; 1945, p. 462; 1956, pp. 725, 726.)

APPENDIX D.

Pertinent Portions of the Workmen's Compensation Law of Georgia, Chapter 114, Referred to in Section II of This Brief.

Section 303 provides that no compensation shall be paid unless notice is given to the employer within 30 days after the accident "* * * unless a reasonable excuse is made to the satisfaction of the State Board of Workmen's Compensation for not giving such notice and it is reasonably proved to the satisfaction of the Board that the employer had not been prejudiced thereby." Section 305 bars the right to compensation "* * * unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, * * *." Section 407 denies compensation to an employee who "refuses employment procured for him suitable to his capacity * * * unless in the opinion of the State Board of Workmen's Compensation such refusal was justified." Section 412 sets out certain things which "* * * must be definitely proved to the satisfaction of the State Board of Workmen's Compensation" in any claim involving a hernia. Section 414 refers to dependents and provides that "* * * the State Board of Workmen's Compensation, however, to have the power in proper cases, in their discretion, to apportion the compensation." Section 415 provides that payments made which were not then due and payable "* * * may, subject to the approval of the State Board of Workmen's Compensation, be deducted from the amount to be paid as compensation." Section 416 provides: "The State Board of Workmen's Compensation, upon application of either party, may, in their discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly." Section 417 authorizes the State

Board when it "* * * deem(s) it to be to the best interest of the employee or his dependents, or where it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this law." (An Alabama court has no authority to award a lump sum award in the absence of agreement of all parties.) Section 418 authorizes the Board when it deems it expedient to award the lump sum to a suitable person as trustee. Section 420 permits an employer having doubt as to rights of parties to "* * * apply to the State Board of Workmen's Compensation to decide between them." Section 421 authorizes the Board to appoint a guardian of a minor claimant. Section 501 gives discretion to the Board with regard to the selection of treatment and physicians for claimants. Section 503 authorizes the Board to designate a physician and order a claimant to appear for an examination. Upon refusal the Board may stop compensation payments.

Section 703 authorizes the Board to "* * * make rules, not inconsistent with this Title, for carrying out the provisions of this Title." Section 704 requires the Board to "prepare and cause to be printed, and upon request furnish free of charge to any employee or employer, such blank forms and literature as they shall deem requisite to facilitate or promote the efficient administration of this Title." Section 705 requires parties who have reached an agreement to file "* * * a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation * * * with the Board for approval as herein provided." Section 706 provides that in case of a disagreement "* * * either party may make application to the Board for a hearing in regard to the matters at

issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing." Section 707 provides for conduct of the hearings: "The members or any of them shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings, and a copy of the award shall immediately be sent to the parties at dispute." Section 709 provides for a review of an award "* * * the State Board of Workmen's Compensation may, within two years from the date that the Board is notified of the final payment of claim, review any award or any settlement made between the parties and filed with the Board and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded or agreed upon, subject to the maximum or minimum provided in this Title, and shall immediately send to the parties a copy of the award." Section 713 permits the Board to appoint a disinterested physician and to fix the fee of the physician. Section 714 provides "Fees of attorneys and physicians and charges of hospitals for service under this Title shall be subject to the approval of the State Board of Workmen's Compensation * * *." (The Alabama Act provides for an attorney's fee of no more than 15 per cent of the award.) Section 715 provides: "All questions arising under this Title, if not settled by agreements of the parties interested therein, with the approval of the State Board of Workmen's Compensation, shall be determined by the members, except as otherwise herein provided."